United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

[CORRECTED COPY]

76-1507

To be argued by
WILLIAM I. ARONWALD

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1507

UNITED STATES OF AMERICA,
Appellant,

—v.—

ANTHONY PROVENZANO, SALVATORE BRIGUGLIO, HAROLD KONIGSBERG and GEORGE VANGELAKOS,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

The United States of America appeals from an order entered on October 29, 1976, in the United States District Court for the Southern District of New York, by the Honorable Charles E. Stewart, Jr., United States District Judge, granting a motion by defendants Anthony Provenzano, Salvatore Briguglio, Harold Konigsberg and George Vangelakos to dismiss an indictment on the grounds that the charges were barred by the statute of limitations.

Indictment 76 Cr. 580, filed on June 22, 1976 in two counts, charged Anthony Provenzano, Salvatore Briguglio, Harold Konigsberg and George Vangelakos with violations of the 1961 version of the Federal Kidnapping Act. Title 18, United States Code, Section 1201. More

specifically, the indictment charged that in or about June, 1961, defendant Anthony Provenzano, who was then President of New Jersey Local 560 of the International Brotherhood of Teamsters, solicited his co-defendants Salvatore Briguglio and Harold Konigsberg to murder Anthony Castellito, who was then Secretary-Treasurer of Local 560. In return for Castellito's death, Provenzano agreed to (a) pay a sum of money to Konigsberg and (b) to appoint Briguglio a business agent of Local 560. The defendants then devised a plan to lure the victim Castellito from New Jersey to his Kerhonksen, New York summer home by persuading him to permit a person hiding out from law enforcement authorities to use Castellito's home as a hideout. On or about June 5, 1961, when Castellito arrived at his Kerhonksen home, he was murdered by Briguglio and Konigsberg, while defendant George Vangelakos dug a nearby grave. The original plans for the burial of Castellito's body in Kerhonksen were subsequently abandoned, and the body was transported back to New Jersey where Castellito was buried. After Castellito's murder Provenzano paid Konigsberg $15,000 and appointed Briguglio a business agent of Local 560.

In August and September, 1976, the defendants filed motions to dismiss the indictment on the ground that it was time-barred by the statute of limitations.

On October 29, 1976, Judge Stewart granted the defendants' motions and ordered the indictment dismissed. From that order, the Government now appeals.

Statement of Facts

This appeal presents a pure question of law: Is the defendants' murder-kidnapping indictment subject to the unlimited statute of limitations prescribed for capital offenses, 18 U.S.C. § 3281,* or to the five-year statute of limitations prescribed for non-capital offenses, 18 U.S.C. § 3282?** If the former statute is applicable, the indictment is not time-barred; if the latter is applicable, the indictment, as Judge Stewart ruled, is time-barred. An understanding of this issue requires, first, a review of the relevant facts, statutes, judicial decisions and Congressional amendments and, second, a discussion of Judge Stewart's ruling below.

A. The Relevant Facts and The Applicable Statutes, Decisions and Congressional Amendment

The murder-kidnapping with which the defendants are charged occurred in 1961. At that time, a violation of the Federal Kidnapping Act, 18 U.S.C. § 1201, was punishable by death and therefore was considered a "capital offense." The statute provided:

> "(a) . . . Whoever knowingly transports in interstate commerce . . . any person who has been unlawfully kidnapped . . . and held for ransom or

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* 18 U.S.C. § 3281 provides, as it did at the time of the 1961 offense, that:

> "An indictment for any offense punishable by death may be found at any time without limitation . . ."

** 18 U.S.C. § 3282 provides that:

> "Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

> reward or otherwise . . . shall be punished (1) *by death if the kidnapped person has not been liberated unharmed and if the verdict of the jury shall so recommend,* or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed." (emphasis supplied).

Since in 1961, when the alleged offenses were committed, the crimes were "capital" ones, the unlimited statute of limitations, 18 U.S.C. Section 3281, was applicable.

In 1968, the Supreme Court in *United States* v. *Jackson*, 390 U.S. 570 (1968), held that the death penalty provision of the Federal Kidnapping Act was unconstitutional. This was so, the Court ruled, because under Section 1201 the death penalty could only be imposed "if the verdict of the jury shall so recommend," and, since no procedure was set forth for imposing a death sentence upon a defendant who either pled guilty or waived jury trial, the statute placed an unconstitutional burden on a defendant's Fifth Amendment right to plead not guilty and Sixth Amendment right to demand a jury trial. *Id.* at 581. No question was raised in *Jackson* about the constitutionality of the death penalty *per se*. *Id.* 591.

Subsequently, on October 24, 1972, Congress amended the Federal Kidnapping Act to eliminate the death penalty provisions and make all violations punishable "by imprisonment for any term of years or for life." 86 Stat. 1072. The initially proposed amendments to Section 1201 retained the death penalty, correcting the defects disclosed in *Jackson*, *supra*. 1972 U.S. Code Cong. and Admin. News 4322. However, the final version of the amendments eliminated the death penalty altogether, not because Congress did not wish to continue kidnapping-murder as a capital offense, but because the uncertainties injected into the law by the Supreme Court's decision in

Furman v. *Georgia*, 408 U.S. 238 (1972), appeared to render the intial amendment unconstitutional.*

On June 22, 1976, shortly after the Government obtained certain evidence of the facts underlying the death of Castellito, the case was presented to a grand jury and the defendants were indicted for the 1961 kidnapping-murder.

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* Congressman Poff, one of the principal sponsors of the amending legislation, and an expert on constitutional issues, remarked:

> "The principal differences between H.R. 15883, the bill before us today, and H.R. 10502, which I introduced a year ago along with several other members of the Committee on the Judiciary, as reported to the House this past June are to be found in the penalty provisions for murder and kidnapping. The same day that H.R. 10505 was reported, the Supreme Court of the United States rendered its decision in the case of Furman against Georgia. My reading of the nine separate opinions in that case convinces me that the Supreme Court would probably hold unconstitutional any death penalty provision, such as those contained in H.R. 10502, which vests in the sentencing authority an absolute discretion whether to impose the death penalty or some lesser offense in any particular case. I am informed that the Department of Justice shares this view.
>
> Accordingly, I introduced H.R. 15883 as a clean bill, amending the penalty provisions to avoid facial invalidity and also incorporating other amendments to H.R. 10502 which had been made by the committee before reporting it favorably to the House in June.
>
> The conforming of the penalty provisions of this bill to the apparent requirements of the Furman decision is nothing but a stopgap handling of the death penalty question. A more lasting determination of how, and whether, the death penalty might be prescribed for the offenses covered by this bill, or for any other Federal crime, is an important and complex matter in itself, and passage of this otherwise relatively noncontroversial measure should not await a permanent resolution of that issue." 118 Cong. Rec. 27116 (Aug. 7, 1972).

B. The District Court's Decision

The District Court correctly recognized that to ascertain whether the indictment was time-barred would require the Court to determine what effect, if any, the *Jackson* decision and the 1972 amendments had on the relevant statutes of limitation. (App. 72-86).

1. The effect of *Jackson*

After discussing the relevant facts, the District Court ruled that after the Supreme Court's 1968 decision in *Jackson*, the unlimited statute of limitations remained in effect.

The District Court noted that, while *Jackson* rendered the death penalty provision unenforceable, the Kidnapping Act literally in effect at that time and in 1961 continued to authorize the death penalty and, therefore, in a literal sense Section 1201 remained a "capital offense." The District Court also observed that there existed numerous decisions in the Federal Courts of Appeals and in State Courts dealing with the continued effect, after the death penalty had been declared judicially unenforceable, of statutory procedures associated with the imposition of the death penalty. Common to all of the decisions was an analysis which looked to whether the procedures had been enacted simply because of the grave nature of the possible imposition of the death penalty or because of the complexity or gravity of the proscribed offense itself. When the reasons for the procedure were found to relate to the complexity or gravity of the offense, the courts uniformally continued to apply the procedural rule. Thus, in *United States* v. *Watson*, 496 F.2d 1125 (4th Cir. 1973), the court was confronted with the question whether the judicial declaration that the death penalty provision in

18 U.S.C. § 1111 (proscribing the murder of federal officers) was unconstitutional rendered inoperable the right of a defendant to the appointment of two lawyers in a capital case. See 18 U.S.C. § 3005. Since the Fourth Circuit found that not only the gravity of the potential penalty but also the complex nature of capital cases supported the two-attorney rule, it was held that the offense remained "capital" for the purpose of applying the two-attorney rule.

Applying the rationale of these cases, the District Court had little difficulty in holding that *Jackson's* declaration that Section 1201's death penalty was constitutionally unenforceable had not affected the applicability of the statute of limitations. The court found that in enacting Section 3281, Congress had intended to insure that crimes of a heinous nature, such as murder-kidnapping, would not escape prosecution because of a mere passage of time. It was the grevious nature of the offense, not the gravity of the penalty, that warranted unrelenting prosecution.

2. The Effect of the 1972 Amendments

Turning next to a consideration of the 1972 amendments of the Kidnapping Act which eliminated the death penalty, the District Court concluded that their effect was to render the indictment time-barred.

The court rejected the Government's contention that the general savings clause, 1 U.S.C. § 109,* preserved the death

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* 1 U.S.C. § 109 provides:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability . . ."

penalty for offenses committed prior to the effective date of the 1972 amendments and with it the unlimited statute of limitations. The court reasoned that, although punishment provisions such as the death penalty are normally saved by the general savings clause for pre-amendment offenses, here the death penalty provision could not be "saved," though literally in effect, because it was judicially unenforceable as a result of *Jackson*. Therefore, the court found that the Government was effectively seeking not to save the death penalty, but only the unlimited statute of limitations. Because decisions of the Supreme Court and the Second Circuit * had previously held that the general savings clause did not normally save "procedures" such as lengthier statutes of limitations, the savings clause could not operate to save the unlimited statute of limitations. Accordingly, the five year statute of limitations was operable, and since the offenses occurred in 1961, the court found the indictment to be time-barred.

ARGUMENT

POINT I

The District Court Misapplied the General Saving Clause and As a Result Erred in Dismissing the Indictment.

The District Court clearly erred in deciding that the general savings clause, 1 U.S.C. § 109, did not preserve the unlimited statutes of limitations for kidnapping-murders committed prior to the amendments. By ignoring the literal language of the general savings clause and by

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* *Bridges* v. *United States*, 346 U.S. 209 (1953); *United States* v. *Obermeier*, 186 F.2d 243 (2d Cir. 1950), *cert. denied*, 340 U.S. 951 (1951).

failing to recognize the unique features that render the unlimited statute of limitations a substantive "liability," not a procedural device, the District Court achieved a result that was neither just nor in accord with Congressional intent.

A. The General Savings Clause

At common law, the amendment of criminal statutes to increase or decrease penalties abated all prosecutions which had not yet reached final disposition in the highest court authorized to review them. *Warden* v. *Marrero*, 417 U.S. 653, 660 (1974); *Bradley* v. *United States*, 410 U.S. 605, 607-08 (1973). To avoid such results, Congress enacted a general savings clause in 1871 that is still in effect today as 1 U.S.C. § 109. That statute provides in pertinent part that "[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute . . ." See p. 7, *supra*.

Beginning with *United States* v. *Reisinger*, 128 U.S. 398 (1888), the general savings clause has been held to apply to criminal statutes. The effect has been to preserve, in the face of amendments or repeals of criminal statutes, the punishments and liabilities that were in effect when the offenses were committed. See *Warden* v. *Marrero*, *supra*, 417 U.S. 653; *Bradley* v. *United States*, *supra*, 410 U.S. 605; *United States* v. *Fiotta*, 454 F.2d 252 (2d Cir. 1972); *United States* v. *Ross*, 464 F.2d 376 (2d Cir. 1972), *cert. denied*, 410 U.S. 990, *reh. denied*, 411 U.S. 977 (1973); *United States* v. *Brown*, 429 F.2d 566 (5th Cir. 1970); *Faubion* v. *United States*, 424 F.2d 437 (10th Cir. 1970); *Duffel* v. *United States* 221 F.2d 523 (D.C. Cir. 1954); *United States* v. *Kirby*, 176 F.2d 101 (2d Cir. 1949); *Lovely* v. *United States*, 175 F.2d 312 (4th Cir. 1949), *cert. denied*, 388 U.S. 834 (1949);

United States v. *Taylor*, 123 F. Supp. 920 (S.D.N.Y. 1954), *aff'd*, 227 F.2d 958 (2d Cir. 1955).

B. The District Court Erroneously Failed to Apply the Savings Clause to the Kidnapping Act as Literally in Effect

If the plain language of the general savings clause is applied to this Kidnapping Act as it read prior to the 1972 amendment, it is clear that the District Court was in error in dismissing the indictment. The death penalty is unquestionably a form of "punishment," and, therefore, under the general savings clause, the death penalty—still literally in effect at the time of the 1972 amendments—was preserved by the general savings clause. See *Warden* v. *Marrero*, *supra*, 417 U.S. at 661. The literal preservation of the death penalty, of course, carried with it the unlimited statute of limitations.

The District Court chose to ignore the plain language of the savings clause because it found that the Supreme Court's decision in *Jackson* had rendered the death penalty unenforceable. The court reasoned that, since the death penalty itself could not be enforced, it would be improper to use the general savings clause simply to "save" the unlimited statute of limitations, a device that the court viewed as "procedural." This reasoning is totally unpersuasive.

First, there is absolutely nothing in the language of the savings clause that even remotely suggests that it is inapplicable in a case such as this one where the penalty sought to be imposed is literally in effect at the time of the amendment, but the penalty has been rendered unenforceable by judicial pronouncement. Indeed, the savings clause provides quite explicitly that the unamended stat-

ute, not the statute as judicially construed, is to be looked to: "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability *incurred under such statute. . . .*" The savings clause makes no reference to the statute as judicially modified.*

A hypothetical example—not very far removed from the realities of this case—readily discloses the anamolous results that follow when the general savings clause is applied, as the District Court erroneously did here, not to the statute itself, but to the statute as judicially modified. Assume that in 1972 Congress had amended the Kidnapping Act to include a death penalty provision that satisfied the requirements of the *Jackson* decision, that is, applicable to both defendants who went to trial and to those who pleaded guilty. In that circumstance, Congress' intent would quite clearly have been to preserve the capital nature of the crime and the unlimited statute of limitations would plainly apply to offenses committed after 1972. But, under the District Court's reasoning, even if Congress had reenacted a broadened death penalty in 1972, the five-year statute of limitations would nonetheless be applicable to all offenses committed prior to the date of the amendment.

This incongruous result would follow, first, because in the District Court's analysis the savings clause is applicable whenever the statute is amended, whether the

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* We, of course, recognize that to apply the general savings clause to the literal statute would not mean that the death penalty could be imposed. To save the death penalty would simply mean that the devices which were made part and parcel of capital offenses in recognition of the heinousness of the offenses and in order to deter these crimes, such as the unlimited statute of limitations, would be preserved.

punishment is reduced *or increased.* Second, since an amendment broadening the death penalty would quite clearly bring the general savings clause into play, the very question that the District Court asked in the present case would again have to be asked in this hypothetical case: What penalties and liabilities are preserved by the general savings clause? Since, under the District Court's reasoning, a court must look not to the statute literally in effect just prior to the amendments but to the statute as modified and limited by judicial decisions, the death penalty would not be preserved because of the effect of *Jackson*, and, therefore, the five-year statute of limitations, not the unlimited statute of limitations, would be applicable to all offenses committed prior to the amendments.

This hypothetical example is a dramatic illustration of why the District Court should have applied the plain language of the general savings clause and looked to the Kidnapping Act as literally in effect in 1972. The example also exposes a fatal flaw in the reasoning of the decision below. The example demonstrates that, in the District Court's view, it was really the effect of the *Jackson* decision declaring the death penalty unenforceable, not the fact that Congress took the Kidnapping Act out of the category of capital offenses in 1972, that required application of a five-year statute of limitations to pre-amendment offenses. The utter illogic of using *Jackson* to effect a repeal of the unlimited statute of limitations becomes manifest when it is recognized that in the first half of its opinion below the District Court had correctly recognized that after the *Jackson* decision in 1968, the unlimited statute of limitations remained applicable. It continued in effect, the District Court found, because the death penalty remained literally applicable and the unlimited statute of limitations was a product of the seriousness of the offense, not the gravity of the death penalty.

The illogic of the District Court's failure to find the unlimited statute of limitations applicable in this case becomes even more poignant when the legislative history of the 1972 amendments is examined. That history makes abundantly clear that Congress did not view murder-kidnapping as any less serious an offense in 1972 than it had in 1961. Indeed, the initial amendments to the Kidnapping Act included a death penalty provision that cured the deficiencies found in *Jackson*. However, during Congressional consideration of the amendments, the Supreme Court decided *Furman* v. *Georgia*, *supra*, 408 U.S. 238 and Congress, not fully understanding the effect of *Furman*, believed it best to defer enactment of a new death penalty provision until the implications of *Furman* could be more carefully studied. See p. 5, *supra*. In light of this legislative history, it would doubtless come as a shock to the Congressmen who enacted the 1972 amendments to learn that their actions would one day be interpreted as a grant of amnesty for all kidnap murderers who had committed their offenses prior to 1967.*

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* The defendants argued in the District Court that, in light of the 1972 amendments, it would be incongruous to relieve after five years' time kidnap-murderers who committed their offenses after enactment of the 1972 amendments of their criminal liability, but to require the defendants to endlessly bear their liability for prosecution. The defendants fail to recognize, however, that it is doubtful whether the 1972 Congress, which appeared to be desirous of continuing the death penalty in effect, but was unsure how to draft an effective death penalty provision in the wake of *Furman*, realized that the effect of its "stop-gap" measure of eliminating the death penalty would take kidnapping-murder out of the scope of the unlimited statute of limitations. Moreover, it may well be that before the five year statute of limitations expires in October, 1977, for the earliest possible post-amendment offenses, Congress will recognize the untoward effect of its "stop-gap" amendment and extend the statute of limitations for these post-amendment offenses. Such an extension would clearly permit continued prosecution so long as the original limitations period had not run. See *United States* v. *Richardson*, 512 F.2d 105, 106 (3d Cir. 1975); *Falter* v. *United States*, 23 F.2d 420, 425-26 (2d Cir. 1928).

C. The District Court Erroneously Viewed the Unlimited Statute of Limitations as a "Procedural Device" Outside the Scope of "Liabilities" Preserved by the Savings Clause

Even assuming *arguendo* that in applying the general savings clause the District Court correctly looked not to the literal language of the penalty provisions of the Kidnapping Act, but to the statute as modified in 1968 by judicial decision, there are additional compelling reasons for finding that the District Court misapplied the savings clause.

Once the District Court had decided that the general savings clause should be applied not to the statutory penalties literally in effect, but rather to the penalties as limited by the courts, the District Court effectively found that the Government was simply asking to continue in effect a longer statute of limitations than existed after the date of the amendments. The District Court concluded that since the Supreme Court in *Bridges* v. *United States*, *supra*, 346 U.S. 209 and the Second Circuit in *United States* v. *Obermeier*, *supra*, 186 F.2d 243, had ruled that statutes of limitations were "procedures," not within the purview of the penalties, forfeitures and liabilities preserved by the savings clause, the unlimited statute of limitations could not be saved. The District Court failed to appreciate, however, the significant distinctions between the limitation statutes involved in this case and those applicable in *Bridges* and *Obermeier*. Indeed, a careful reading of this Court's decision in *Obermeier* compels the conclusion that the general savings clause preserved the unlimited statute of limitations.

The issue in both *Bridges* and *Obermeier* was whether a prosecution for a naturalization offense was barred

when a three year statute of limitations superseded a longer five year statute of limitations that had been in effect at the time of the offense. In *Bridges*, it was held that a specific savings clause similar to the general savings clause had not preserved the longer statute of limitations, and, in *Obermeier*, it was held that the general savings clause itself did not save the longer statute of limitations. The reasoning in both cases was identical. Both Courts held that a statute of limitations is generally a procedural device, not a "penalty" or "liability" preserved by the savings clause. 346 U.S. at 226-27; 186 F.2d at 254; see *Warden* v. *Marrero*, *supra*, 417 U.S. at 661.*

The critical distinction between *Bridges*, *Obermeier* and the present case is that here the unlimited statute of limitations is in no sense a "procedural device." The unlimited statute of limitations is both qualitatively and quantitatively different from the limitation statutes initially in effect in both *Bridges* and *Obermeier*. Indeed, the period during which kidnap-murder prosecutions may be brought is not a statute of limitations at all. It is a legislative determination that with respect to certain heinous crimes the offender should suffer unrelenting

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* Both *Bridges* and *Obermeier* involved the June, 1948, repeal of a special five year statute of limitations governing violations of the Naturality Code, and the substitution of the three year statute of limitations then generally in effect for most criminal violations. It is significant that Congress specifically found in reducing the limitation period to three years that there was no reason to single out naturalization violations for a longer period of limitations then applicable to other crimes. See Reviser's Note to 18 U.S.C. § 3282. Of course, in the present case, there is absolutely nothing to indicate that in 1972 Congress intended to have a five year statute of limitations apply to pre-amendment kidnap-murders, the effect of which would have been to grant amnesty to all pre-1967 offenses.

prosecution *without limitation in time.* See *State* v. *Zarinsky*, 143 N.J. Super 35, 51 (App Div. 1976).* That such a statute is plainly meant as a deterrent to potential offenders is the most forceful evidence that the unlimited statute of limitations is a "liability" which is and should be preserved by the general savings clause.

Moreover, this Court recognized in *Obermeier* that there are instances in which statutes of limitations will be preserved by the savings clause. Such cases include those in which "the statute creating a substantive right makes the period of limitations a part or qualification of the right itself." 186 F.2d at 254. Although it is true that the unlimited statute of limitations was not contained in the Kidnapping Act itself, it is clear that the unlimited statute of limitations was carved out to apply to a very limited number of most serious offenses those for which the death penalty was warranted.** Accordingly, this case fits within the very exception recognized in *Obermeier*, that is an instance "where the statute creating a substantive right makes the period of limitations a part or qualification of the right itself."

* * * * *

The effect of the District Court's decision is to find that Congress' 1972 amendments of the Kidnapping Act granted amnesty for this 1961 kidnapping-murder of Anthony Castellito. It is inconceivable in light of the legislative history of the 1972 amendments that Congress intended this perverse result. While it is, of course, true

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* This well-reasoned opinion is reproduced in its entirety in the Government's Appendix. (App. 87-112).

** The offenses for which death is prescribed by the Federal Criminal Code represent a highly selective group of most serious offenses. See 18 U.S.C. §§ 34, 794, 1111, 1114, 1716, 1751, 1992, 2031, 2113, 2381.

that on occasion Congress' inadvertent actions may result in undesirable and unintended consequences, the District Court incorrectly believed that the general savings clause required the conclusion reached below. Indeed, the plain language of the general savings clause mandates the preservation of penalties literally prescribed in an amended or repealed criminal statute, and while this preservation of unenforceable penalties does not permit the penalty itself to be imposed, it does permit devices that reflect the seriousness of the offenses, such as the unlimited statute of limitations to continue in effect. A contrary construction of the general savings clause not only ignores its plain language, but also will surely lead to anomalous results in the future such as those described in the hypothetical example in this brief. In addition, the District Court failed to appreciate the unique policy consideration justifications underlying the unlimited statute of limitations. A statute that subjects an offender to relentless prosecution without limitation in time surely imposes a "liability" that should be preserved by the general savings clause.

CONCLUSION

The order dismissing the indictment should be reversed and the case remanded for trial.

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Rose Weir being duly sowrn. deposes and says that she is employed in the office of the Strike Force for the Southern District of New York.

That on the 9th day of December, 1976 he served one copy of the within corrected brief by placing the same in a properly postpaid franked envelope addressed:

(1) Maurice P. Edelbaum, % Henry Boitell, 233 Broadway, New York,NY (2) Frederic C. Ritger, Jr., Esq., 106 Valley Street, South Orange New Jersey; (3) Robert Eisenberg, Esq., 26 Journal Square, Jersey City, New Jersey,; (4) Frank A. Lopez, Esq., 31 Smith Street, Brooklyn, New York and (5) Harold Konigsberg, Metropolitan Correctional Center, 150 Park Row, New York, New York

And deponent further says that she sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Rose Weir

Sworn to before me this
9th day of December, 1976

Elizabeth A. McKeever

ELIZABETH A. McKEEVER
Notary Public, State of New York
No. 43-4629132
Qualified in Richmond County
Commission Expires March 30, 1978